IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Civil Appellate Side

Writ Petition No. 2766 of 2005

Mrs.J.D.Keni ..Petitioner

vs.

1. The Competent Authority
under the Maharashtra Slum
Areas (I.C.& R.) Act,1971
and others ..Respondents

Shri Arif Doctor i/b M/s Mulla & Mulla and C.B.C. for petitioner.

CORAM:A.P.SHAH J.
21st OCTOBER, 2005

P.C.

. Leave to amend as per the draft amendment.

2. This petition is directed against the judgment of the Maharashtra Slum Areas (I.C.& R.) Tribunal, Mumbai (Tribunal for short) dismissing the appeal of the petitioner and upholding the decision of the Competent Authority under sec.4 to declare the land in question as slum area under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, hereinafter referred to as the "Slum Areas Act".

3. The petitioner is the owner of Plot No.57 falling under the Town Planning Scheme known as

"Town Planning Scheme No.1 of Pune". The said plot came to be reserved for "public play ground" in the Final Development Plan published in the year 1971. On 17th June, 1971, the said plot was notified for acquisition under sec.126(2) of the Maharashtra Town Planning Act, 1966 read with sec.6 of the Land Acquisition Act, 1894. The Competent Authority during the pendency of the said acquisition proceedings had declared the said area with other adjoining plots belonging to several other persons as "slum" in exercise of powers conferred under the Slum Areas Act and published the declaration thereof in Govt. Gazette dated 16th August, 1973. The petitioner challenged the aforesaid declaration by way of appeal bearing Appeal No.8 of 1973 filed before the Tribunal. The Tribunal vide its judgment and order dated 16th September, 1973 had allowed the appeal and set aside the declaration of the slum area made by the Competent Authority solely on the ground that the declaration of plot in question as slum area was incapable of being enforced in view of prior reservation of the land for the purpose of "play ground" under the Maharashtra Regional Town Planning Act, 1966.

4. At this juncture it is necessary to note that apart from the above Plot No.57 some other plots

bearing Plot Nos. 55 and 56 were also subject matter of the above declaration. The said plots were subject matter of the separate appeals since the same were also declared as slum areas by the Competent Authority under the Act. The appeals preferred by the respective plot owners were also allowed by the Tribunal on the identical ground holding that the declaration of the plots in question as slum area is not permissible in view of the reservation of the plot for the purpose of "play ground" under the Maharashtra Town Planning Act, 1966. The aforesaid decision of the Tribunal dated 22nd July, 1974 was the subject matter of Writ Petition No.818 of 1975 wherein the Division Bench was pleased to hold that the declaration of Plot Nos. 55 and 56 as slum area was legal and valid. The said decision was rendered in the case of State of Maharashtra Vs. Mahadeo Dole; AIR 1980 Bombay 348.

5. It appears that since no challenge was made to the order of the Tribunal dated 16th September, 1974, relating to Plot No.57 owned by the present petitioner, the Competent Authority thought it fit to declare the said plot of land as slum area by issuing fresh declaration under the Act, keeping in view the law laid down by the Division Bench in the

case of Mahadeo Dole (cited supra). Accordingly, the Competent Authority issued the show cause notices to the petitioner why the said Plot No.57 owned by the petitioner should not be declared as slum area and after considering the reply of the petitioner and on the basis of the material on record, declared Plot No.57 as slum area vide its declaration dated 16th July, 1983 published in the Govt. Gazette on 28th July, 1983.

6. Aggrieved by the aforesaid declaration and consequent publication thereof in the official gazette, the petitioner preferred an appeal being Appeal No.63 of 1983 to challenge the said declaration and notification issued under the Slum Areas Act. The Tribunal after hearing the parties to the appeal vide its judgment and order dated 24th January, 1996 allowed the appeal holding that the earlier order passed by the Tribunal in Appeal no.8 of 1973 dated 16th September, 1974 would operate as resjudicata between the parties. The said decision of the Tribunal was challenged by the Competent Authority in Writ Petition No.3171 of 1986. The writ petition was allowed by Daga J. vide judgment and order dated 23rd April, 2001 holding that the doctrine of resjudicata would not apply to the facts and circumstances of the case

and the proceedings were remitted back to the Tribunal with a direction to hear and decide the appeal on its own merits in accordance with the law laid down by this court in the case of State of Maharashtra Vs. Mahadeo Dole. The petitioner preferred S.L.P. before the Supreme Court but the S.L.P. was dismissed. The Tribunal thereafter heard parties including the slum dwellers who sought to intervene in the matter and after examination of the material on record dismissed the appeal preferred by the petitioner.

7. I have heard Shri Doctor appearing for the petitioner. I have also gone through the records including the impugned order of the Tribunal. The Tribunal has considered the material placed on record and recorded as follows:

> "On this background the perusal of the record of respondent Competent Authority shows the position of basic amenities on the said plot No.57 as per the table on page 153 as under:
>
> (a) The number of Huts as per census of 1976: - 496.

(b) The number of present Huts: 600 Approximately.

(c) Population 3000

(d) Water taps: 1 Stand Post of 4 taps and other stand post of 3 taps as against the requirement of additional 20 water taps.

(e) W.Cs: Available number is 6 with a shortfall of 50 requisite seats.

(f) Gutters: Not Available.

(g) Street lights: Only 1 Pole is available against requirement of 12 electric poles.

(h) Passages: Kutcha Roads are available.

(i) Internal situation of the Huts: (1) Whether the huts suffer from dampness to some extent? To some extent.

(2) Whether health facilities are available for the huts? No.

(3) Whether water supply is available for

the Huts is satisfactory? No.

(4) Whether the Huts have sufficient natural light and air?- No.

(5) Whether height of the Huts is sufficient: No.

(6) Whether the Huts are durable? No.

8. In my opinion, having regard to the conditions prevailing in the area and lack of basic amenities the Competent Authority was justified in declaring the area as slum area under the Act. The only other contention raised on behalf of the petitioner is that he was not afforded opportunity of hearing by the Competent Authority. The contention is devoid of any substance. It is seen from the record that the opportunity of hearing was given to the petitioner but the petitioner chose to remain absent on the date of hearing. More over it was not the case of the petitioner before the Tribunal that the requisite basic amenities for the residents are present in their property but he is deprived of the opportunity to point out the same to the Competent Authority. Under the

circumstances no interference is called for in exercise of powers under Article 227 of the Constitution. Petition is dismissed.